IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.36 OF 2005

Harishchandra Vitthoba Kopate. ...Appellant.
Versus.
Maharashtra Rajya Sahakari Dudh
Mahasangh Maryadit, Mumbai. ... Respondents.

Shri A.M.Saraogi with Shri S.G.Mendon for the Appellant.

Shri Milind Sathe with Shri Ramchandra Yadav for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 25th January, 2005.

P.C.:

1. This Appeal from order is filed by the unsuccessful Plaintiff. The Notice of Motion taken out by the Appellant/Plaintiff has been dismissed by the learned trial Judge.

2. The Respondent is a Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1960. An agreement was entered into after inviting of bids by the Respondents in favour of the Appellant by which the Appellant was appointed as a contractor to run the canteen in the premises of the Respondents. The Respondents purported to terminate the said agreement on various grounds. The allegation of the Respondents is that the Appellant has committed breach of the terms and conditions of the agreement dated 16th August 2004. One of the allegations is that the Appellant is providing

substandard food items in the canteen.

3. The learned Counsel for the Appellants has taken me through the various inspection reports prepared by the Officers of the Respondents showing the alleged infirmities in the working of the canteen run by the Appellant. He submitted that the said reports indicate that necessary steps have been taken by the Appellant to rectify the defects. He submitted that the termination of the contract is ex-facie contrary to the terms and conditions of the agreement. He submitted that after the Appellant had invested large amount in the canteen, the Respondents cannot be allowed to terminate the contract in an arbitrary manner. He submitted that the Appellant was entitled to the interim relief.

4. I have considered the submissions of the learned Counsel appearing for the Appellant. It is to be noted here that the suit is not for specific performance of the agreement entered into between the parties. Admittedly the Respondents have purported to terminate the agreement. The prayer in the suit is for declaration that the contract is subsisting.

5. In my view the learned trial Judge was right when he came to the conclusion that even assuming that the Respondents have illegally terminated the agreement, the remedy of the Appellant is to seek compensation. The Appellant has entered into the contract to run the

canteen obviously with an object of earning profit. Assuming that there is illegal termination, loss which may be caused by the alleged termination can be always compensated in terms of money. In a suit for declaration in absence of a prayer for specific performance of contract, the Appellant is not entitled to interim relief which will have the effect of enforcing the contract specifically.

6. In my view there is no merit in the Appeal. The learned trial Judge has exercised discretion by refusing to grant interim relief of temporary injunction. The exercise of discretion is not arbitrary.

7. The Appeal is dismissed with no order as to costs.

8. At this stage the learned Counsel appearing for the Appellant prays that the ad-interim order passed by this court be allowed to operate for a reasonable time. The said request is opposed by the learned Counsel for the Respondents by submitting that as a result of the order of statusquo, there is no canteen available for the employees. Considering the fact that the ad-interim order of statusquo is in operation from October 2004, the said order is continued for a period of four weeks from today. 9. Parties to act on authenticated copy of this order.

Judge.